

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

— against —

DANIEL LUGO,

Defendant.

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MEMORANDUM, ORDER
AND JUDGMENT
01-CR-922

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT, E.D.N.Y.
★ JUL 11 2005 ★
BROOKLYN OFFICE

WEINSTEIN, Senior District Judge:

Pursuant to a remand from the United States Court of Appeals for the Second Circuit, Daniel Lugo moves the court to for resentencing. A hearing with the defendant present by telephone was conducted. A full transcript is available.

The court has considered the arguments of counsel and the defendant along with all of the papers mentioned at the hearing on June 27, 2005, including a letter faxed from the prisoner-defendant to the court on June 27, 2005. It has reviewed all of the matters which were considered at great length at the time of sentencing. The trials of this defendant as well as other defendants along with materials submitted during the sentencing hearing revealed a serious conspiracy to deliberately murder a person on the streets of New York.


The conspiracy of which this defendant was convicted was dangerous, requiring harsh punishment under the Guidelines and each of the elements of 18 U.S.C. § 3553. The sentence imposed is particularly important as a matter of general deterrence to prevent similar criminal conduct within the city of New York. Specific deterrence of this defendant is also implicated since the defendant is a recidivist whose criminal conduct in the instant case was not inhibited by prior punishment. The necessity of incapacitating this defendant in view of his danger to society

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supports the consecutive nature of the sentence.

Intervening cases, including *United States v. Booker*, 125 S. Ct. 738 (2005), and *United States v. Crosby*, 397 F.3d 103, 118 (2d Cir. 2005), would not have resulted in a different sentence. The motion to resentence is denied.

SO ORDERED.

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Jack B. Weinstein
Senior U.S.D.J.

Dated: June 27, 2005
Brooklyn, New York